

**REMARKS**

The present Response is being filed under a Certificate of Mailing as indicated. Claims 1, 2, 7, 10, 11, 15, 18, 19, and 23 remain pending. Claims 3-6, 8, 9, 12-14, 16, 17, 20-22 have been withdrawn. Claim 24 has been cancelled.

**Drawings**

FIG. 3 has been replaced, with item 118 being directed toward the connecting portion.

**35 USC §102**

Independent claim 1 is directed to an instrument for measuring the medullary canal in order to determine the proper size for a stem centralizer. The instrument, as recited in claim 1, includes an elongated central portion and a contact portion. The contact portion includes a contact area “defining a relief area for providing clearance between the instrument and the medullary canal.” Claim 1 has been amended to state that the relief area is “a region that is cut-out of the contact area.”

None of the prior art cited in the Office Action discloses such a feature. The Office Action states that claim 1 as being anticipated by U.S. Patent No. 5,471,756 to Bolanos et al. (“Bolanos”). Bolanos is directed to a lumen sizer having a handle portion 126 with a projection 140 that includes a sizing portion 142 and a frustoconical joining region 144. There is no disclosure in Bolanos of a relief portion that is defined by the contact area, such that the relief area is cut-out from the contact area. The Office Action attempts to equate the sizing portion 142 of Bolanos with the contact area of the present claim 1 and the frustoconical joining region 144 of Bolanos with the relief area of claim 1 of the present application. However, the frustoconical joining region 144 is not cut-out from the sizing portion 142. The two regions are merely adjacent. Instead, as illustrated in the figures of the present application and as recited in claim 1, the relief area is a region that is cut-out of the contact area. As illustrated in FIG. 2 of Bolanos, the frustoconical joining region 144 is the transition region between the sizing portion 142 and handle portion 126. The frustoconical joining region 144 is therefore, not defined by the sizing portion nor cut-out from the sizing portion.

For at least this reason, independent claim 1 and its dependent claims are believed to be allowable.

Claim 10 is directed to an instrument for measuring the medullary canal in order to determine the proper size for a stem centralizer. The instrument of claim 10 recites an elongated central portion and a first contact portion that has a contact area that defines a relief area. The instrument of claim 10 also recites a second contact portion that has a contact area that defines a relief area. Claim 10 has been amended to clarify that the relief area is a region that is cut-out from the contact area. Because claim 10 also includes the limitation that the contact areas define the relief areas and that the relief areas are cut-out from the contact areas, claim 10 is believed to be allowable for at least the reasons stated above in reference to claim 1.

Therefore, claim 10 and its dependents are also believed to be allowable.

### **35 USC §103**

Independent claim 18 is directed to a kit for use in performing a total hip arthroplasty. The kit includes a plurality of instruments adapted for measuring the medullary canal, a hip stem, and a plurality of stem centralizers. Each of the plurality of instruments includes an elongated central portion and a contact portion. The contact portion has a contact area that defines a relief area. Claim 18 also has been amended to recite that the relief area is cut out from the contact portion.

As discussed above in reference to claim 1, Bolanos does not disclose a relief area that is defined by the contact area. Neither does U.S. Pat. No. 5,314,493 to Mikhail (“Mikhail”). As stated in the office action, Mikhail does not disclose a measuring instrument. In order to establish a *prima facie* case of obviousness, each and every limitation of the claim must be present in the prior art. Because the prior art, whether alone or in combination, does not disclose a relief area that is defined by the contact area, claim 18 and its dependents are believed to be allowable.

Independent claim 23 is directed to a method for performing a joint arthroplasty and includes the steps of providing a plurality of instruments, each of the instruments including an elongated central portion and a contact portion. The contact portion includes a plurality of contact areas, which define plurality of relief areas. The plurality of relief areas are defined as cut-outs of the contact area. As stated above in reference to claim 18, neither Bolanos nor Mikhail disclose a plurality of instruments having a contact area that defines a relief area,

such that the relief areas are cut-outs of the contact areas. Therefore, claim 23 and its dependent claim are believed to be allowable over the prior art.

Independent claim 24 has been cancelled, rendering the 103 rejection moot.

**Conclusion**

For the above-described reasons it is respectfully submitted that the rejections to the claims have been overcome and that all remaining claims, namely claims 1, 2, 7, 10, 11, 15, 18, 19, and 23 are currently in condition for allowance. A Notice of Allowance is respectfully requested. No fees are related to this response are believed to be due. However, if fees are required, the Examiner is hereby authorized to debit deposit account no. 10-0750/DEP5084-5084/CKB.

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